

SERVED : June 10, 1993

NTSB Order No. EA-3898

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of May, 1993

JOSEPH M. DEL BALZO,
Acting Administrator,
Federal Aviation Administration,

Complainant,

Docket SE-12922

v.

VERNER P. ELIASON,

Respondent.

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by respondent in this proceeding because it was not, as required by section 821.48(a) of the Board's Rules of Practice,¹ perfected by

¹Section 821.48(a) provides as follows:

"§ 821.48 Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a

(continued. . .)

the filing of a timely appeal brief. 49 C.F.R. 821. We will grant the motion, to which respondent filed no answer.²

The record establishes that respondent filed a timely notice of appeal from the written decision served by the law judge on March 1, 1993 terminating the proceedings and dismissing respondent's appeal for lack of prosecution.³ Respondent did not, however, file an appeal brief within 30 days after that date.⁴ Inasmuch as respondent's untimeliness in filing an appeal brief does not appear to be excusable for good cause shown, his appeal will not be entertained. See Administrator v. Hooper, NTSB Order EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

¹(continued)
party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

²In response to the Administrator's motion to dismiss, respondent on May 18, 1993 submitted a one-page appeal brief. However, this brief contained no explanation for its tardiness, nor a motion for leave to file the brief out of time.

³The law judge dismissed, for want of diligent prosecution, respondent's appeal from an order of the Administrator suspending for 90 days- any airman certificate held by the respondent, for his alleged violations of sections 91.127(c), 91.130(c), 91.155(a) and 91.13(a) of the Federal Aviation Regulations, 14 C.F.R. Part 91.

⁴In his notice of appeal respondent expresses confusion as to how to proceed with his appeal and states that he is "not versed in the technical procedures to accomplish this." However, the respondent was sent a copy of the Board's rules on January 5, 1993. Also, attached to the law judge's March 1 decision was an explanation of the procedural requirements of § 821.48.